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The Hon. Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 FARBOD AMINI, a single man,

10 Plaintiff,

11 vs.

12 BANK OF AMERICA, N.A., a national  
bank association; LANDSAFE APPRAISAL  
SERVICES, INC., a corporation; and  
HOME RETENTION SERVICES, INC., a  
corporation,

16 Defendants.

17 NO. C11-0974 RSL

PLAINTIFF'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON RESPA  
AND FDCPA CLAIMS

NOTE ON MOTION CALENDAR:  
December 28, 2012

18 I. RELIEF REQUESTED

19 Plaintiff Farbod Amini moves for partial summary judgment on his claims against  
20 Bank of America, N.A., for violations of the Real Estate Settlement Procedures Act, 12  
21 U.S.C. § 2605, and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*

22 II. FACTS

23 On August 9, 2006, Mr. Amini signed a promissory note for \$504,000 in favor of  
24 Countrywide Bank, N.A. ("Countrywide"), secured by a first position Deed of Trust on real  
25 property owned by Mr. Amini located at 97 Utsalady Road, Camano Island, Island County,

26  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT - 1  
(NO. C11-0974 RSL)

Berry & Beckett  
PLP  
1708 Bellevue Avenue  
Seattle, WA 98122  
(206) 441-5444 FAX (206) 838-6346

1 Washington (the “real property”). Declaration of Farbod Amini in Support of Motion for  
2 Partial Summary Judgment (“Amini Decl.”) at 2. On that same day, Mr. Amini signed  
3 another promissory note in favor of Countrywide for a line of credit loan in the amount of  
4 \$30,000, secured by a second position Deed of Trust on the real property. *Id.*

5 Mr. Amini stopped making payments on the \$504,000 loan after October 2008.  
6 Answer to Second Amended Complaint (Dkt. #38) at ¶ 14. Mr. Amini stopped making  
7 payments on the \$30,000 loan after December 2008. *Id.*

8 Prior to April 2009, the \$504,000 loan and the \$30,000 loan were both serviced by  
9 Countrywide Home Loans Servicing, LP. Second Amended Complaint at ¶ 21; Answer to  
10 Second Amended Complaint at ¶ 16. On about April 27, 2009, Countrywide merged with  
11 Bank of America, N.A. (“BOA”), and BOA obtained any interest that Countrywide held in  
12 the two notes. *Id.* Immediately subsequent to the merger, the two loans were serviced by  
13 Bank of America Home Loans Servicing, LP, which is the successor to Countrywide Home  
14 Bank of America Home Loans Servicing, LP, which is the successor to Countrywide Home  
15 Loans Servicing, LP. *Id.*

16 On or about June 13, 2011, Mr. Amini received correspondence from BOA informing  
17 him that the servicing rights for the \$504,000 and \$30,000 loans were transferring to BOA,  
18 effective July 1, 2011. Amini Decl. at 2 and Ex.’s A, B.<sup>1</sup> In those notices, Mr. Amini was  
19 informed that the owner of the \$504,000 loan was Wells Fargo (BSALTA 2006-7), and that  
20 the owner of the \$30,000 loan was E\*Trade Bank. *Id.* By letter dated June 16, 2011, Mr.  
21 Amini, through Beckett, informed BOA that he was represented by legal counsel and  
22 requested BOA not to contact him directly concerning the servicing of the \$504,000 and  
23

24  
25  
26 <sup>1</sup> BOA is the successor to Bank of America Home Loans Servicing, LP. Second Amended  
Complaint, ¶ 3; Answer to Second Amended Complaint, ¶ 2.

1 \$30,000 loans, but to communicate only with Beckett. Beckett Decl. at 2 and Ex. I. The June  
2 16, 2011 letter was delivered to BOA on June 20, 2011. *Id.*

3 On June 23, 2011, an “Assignment of Deed of Trust” was signed by a representative  
4 of Mortgage Electronic Registration Systems, Inc., stating that the beneficial interest under  
5 the deed of trust securing the \$504,000 loan, and “the note(s) and obligations therein  
6 described” were being assigned by to Citibank, N.A., as Trustee for the Holders of Bear  
7 Stearns Alt-A Trust 2006-7, Mortgage Pass-Through Certificates, Series 2006-7. Beckett  
8 Decl., Ex. J.<sup>2</sup>

9 Mr. Amini’s lawyer is the undersigned, Guy Beckett (“Beckett”). On September 14,  
10 2010; October 18, 2010; and November 18, 2010, Beckett informed Bank of America Home  
11 Loans Servicing, LP in writing that Beckett represented Mr. Amini, and requested loan  
12 servicing documents, including payment records, for the \$504,000 loan. Beckett Decl., at 2  
13 and Ex.’s A, E, and G. On September 23, 2010 and November 18, 2010, Beckett informed  
14 Bank of America Home Loans Servicing, LP in writing that Beckett represented Mr. Amini,  
15 and requested loan servicing documents, including payment records, for the \$30,000 loan. *Id.*  
16 at 2 and Ex.’s C, G.

17 BAC Home Loans Servicing, LP refused to provide any documents in response to the  
18 four written requests. Beckett Decl. at 2 and Ex.’s B, D, F and H.

19 Mr. Amini himself informed BAC Home Loans Servicing, LP several times during  
20 telephone that Beckett represented him. Amini Decl. at 2; Beckett Decl., Ex. L.

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25 <sup>2</sup> BOA claims it has no records which memorialize the assignment of the notes to Wells Fargo  
26 (BSALTA 2006-7) or E\*Trade Bank other than the Assignment of Deed of Trust. See Beckett Decl.  
at 2 and Ex. K. Apparently, the June 23, 2011 Assignment of Deed of Trust memorializes the  
assignment of the \$504,000 loan referenced in the June 13, 2011 correspondence to Mr. Amini.

1 Since June 13, 2011, BOA contacted and/or attempted to contact Mr. Amini directly  
2 by telephone about the \$504,000 loan and/or the \$30,000 loan on June 14, 2011(five times);  
3 June 20, 2011 (twice); June 27, 2011 (twice); June 28, 2011 (five times); July 6, 2011 (ten  
4 times); July 11, 2011, July 13, 2011; and July 14, 2011 (four times). Amini Decl. at 2 and  
5 Ex. C; Beckett Decl. Ex. L, M. At a minimum, BOA made personal contact as a result of  
6 those telephone calls on June 14, 2011 (twice); June 20, 2011; June 28, 2011 (twice); July 6,  
7 2011; and July 13, 2011. Amini Decl., Ex. C; Beckett Decl., Ex. L. BOA also contacted Mr.  
8 Amini directly about one or both loans, by sending him collection notices dated October 1,  
9 2011; October 28, 2011; November 1, 2011; November 29, 2011; December 30, 2011;  
10 January 30, 2012; February 28, 2012; March 29, 2012; April 27, 2012; May 30, 2012; June  
11 19, 2012; June 19, 2012; July 30, 2012; August 30, 2012; September 27, 2012; and October  
12 30, 2012. Amini Decl., Ex. D.

14 Servicing for the \$30,000 loan transferred to Specialized Loan Servicing, LLC, a  
15 company unaffiliated with BAC, effective December 25, 2011. Amini Decl., Ex. E.

### 17 III. LEGAL AUTHORITY AND DISCUSSION

#### 18 A. BOA violated the Real Estate Settlement Procedures Act by refusing to provide 19 documents in response to Qualified Written Requests.

20 In pertinent part, 12 U.S.C. §2605(e) provides as follows:

##### 21 **Duty of loan servicer to respond to borrower inquiries.**

22 (1) Notice of receipt of inquiry

23 ..

24 (B) Qualified written request.

25 For purposes of this subsection, a qualified written request shall be a written  
26 correspondence, other than notice on a payment coupon or other payment  
medium supplied by the servicer, that

(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry

Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall --

... (C) After conducting an investigation, provide the borrower with a written explanation or clarification that includes --

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

If a loan servicer fails to comply with any provision of Section 2605, the borrower is entitled to recover any actual damages suffered as a result of the failure; and in the case of a pattern or practice of noncompliance, the borrower may also recover statutory damages of up to \$1,000; costs; and reasonable attorney's fees. 12 U.S.C. §2605 (f)(1), (3).

Mr. Amini, through his legal counsel, made four Qualified Written Requests for information and documents about his loans to Bank of America Home Loans Servicing, LP, but it refused to provide any information or documents in response to any of those requests.

In *Moon v. GMAC Mortgage Corp.*, 2009 WL 3185596, at \*4 (W.D. Wash. 2009), under almost identical facts, Judge Zilly ruled that a loan servicer's refusal to respond to a

1 borrower's requests for records violated RESPA. The borrower wrote the servicer a letter  
2 asking for "complete copies of our loan documents," and explained that her husband had died  
3 and that she had retained an attorney who was authorized to speak to the servicer about the  
4 loan account. The borrower received no response, so the borrower's attorney sent two  
5 additional letters to the servicer, requesting "complete copies of all the loan documents."  
6 The servicer did not respond to these letters within the twenty-day period provided by 12  
7 U.S.C. § 2605(e)(1)(A) or provide the requested documents within the sixty-day period  
8 prescribed by 12 U.S.C. §2605(e)(2). In the borrower's subsequent lawsuit, the servicer  
9 moved for summary judgment to dismiss the borrower's claims that the servicer's failure to  
10 respond within the time frames established by these statutes constituted a RESPA violation.  
11 The servicer argued that the three letters were not "Qualified Written Requests." Judge Zilly  
12 rejected this contention:  
13

14 Defendant's contention that none of the three letters at issue constitute a  
15 qualified written request ("QWR") lacks merit. Defendants assert that  
16 plaintiff's letter dated September 7, 2007 is not a QWR because it is unsigned  
17 and does not state the account is in error. Neither a signature nor an  
18 accusation of error, however, are requirements of a QWR. A QWR need only  
19 ask for information relating to servicing and provide the relevant names and  
account numbers. It requests copies of loan documents and contains the  
names of the borrowers and account numbers at issue. Thus, the September  
letter constitutes a QWR to which GMAC failed to timely respond....

20 The two letters sent in January 2008 by plaintiff's attorney likewise qualify as  
21 QWR's. Defendants' assertion that the letters are not QWRs because they do  
22 not bear plaintiff's signature or are not accompanied by an authorization form  
containing plaintiff's and her husband's social security numbers runs contrary  
23 to the statutory definition of a QWR. RESPA specifically envisions that a  
QWR may be sent by a borrower's agent. *See* 12 U.S.C. § 2605(e)(1)(A).  
Both letters at issue indicate that the author ... had been retained by plaintiff to  
represent her. Both letters identify the borrowers and the account numbers.  
Both request copies of loan documents.... Both letters are QWRs.

25  
26 *Moon, 2009 WL 318559, at \*4.*

1 Beckett's letters sent in this case are similar to the letters sent in *Moon*. The letters  
2 identified the borrower, the loan account numbers, and requested copies of loan documents,  
3 including payment records. Accordingly, the letters were Qualified Written Requests under  
4 RESPA. 12 U.S.C. § 2605(i)(3) (records pertaining to loan payments are "loan servicing"  
5 records under RESPA); *Corazzini v. Litton Loan Servicing LLP*, 2010 WL 6787231, at \*11  
6 (N.D. N.Y. 2010) (borrower's written request for information regarding payments applied to  
7 her loan was a request for information relating to loan servicing and therefore was a  
8 Qualified Written Request).

9  
10 In its motion to dismiss (Dkt. #23), BOA argued that a RESPA Qualified Written  
11 Request "must include 'a statement of the reasons for the belief of the borrower ... that the  
12 account is in error or provide[] sufficient detail to the servicer regarding other information  
13 sought by the borrower.'" Motion to Dismiss at 5. Judge Zilly rejected this very argument in  
14 *Moon*. As this Court agreed in its ruling on the Motion to Dismiss (Dkt. #30 at 6-7), such a  
15 statement is not required in order for a communication to be a Qualified Written Request.  
16  
17

18 The complete relevant portion of 12 U.S.C. §2605(e)(1)(B) provides as follows:

19 [A] qualified written request shall be a written correspondence, other than  
20 notice on a payment coupon or other payment medium supplied by the  
servicer, that --

21 (i) includes, or otherwise enables the servicer to identify, the name  
and account of the borrower; and

22 (ii) includes a statement of the reasons for the belief of the borrower,  
to the extent applicable, that the account is in error *or* provides sufficient  
detail to the servicer regarding other information sought by the borrower.

23 12 U.S.C. §2605(e)(1)(B) (emphasis supplied). Because Beckett's letters provided  
24 "sufficient detail" to Bank of America Home Loans Servicing, LP to inform it of the

1 information sought by Mr. Amini, they were Qualified Written Requests even though they  
2 did not contain any discussion of account errors. This Court has already ruled that the letters  
3 were Qualified Written Requests under RESPA. Order on Motion to Dismiss at 7.

4 Other courts agree with the Court's ruling. In *Catalan v. GMAC Mortgage Corp.*, 629  
5 F.3d 676 (7th Cir. 2011), the loan servicer made the same argument made by BOA in its  
6 motion to dismiss. The borrowers had written letters to the U.S. Department of Housing and  
7 Urban Development, which then forwarded them to the servicer. In the letter, the borrower  
8 sought information about payments they claimed to have made. The servicer argued the  
9 letters were not qualified written requests because they did not identify an error in the  
10 borrowers' account or provide any statement of the reasons the borrowers believed their  
11 account was in error. The servicer further argued that communications that "merely dispute a  
12 debt or request information are not 'qualified written requests' and do not trigger the  
13 obligations under section 2605." *Id.* at 686 (citation omitted). The Seventh Circuit Court of  
14 Appeals rejected this argument:  
15

16 By GMAC Mortgage's argument, a lender would have no obligation to  
17 respond to a borrower who expressed her belief that her account was in error  
18 but was unable to provide specific reasons for that belief, an untenable result  
19 under the language of the statute.

20 RESPA does not require any magic language before a servicer must construe a  
21 written communication from a borrower as a qualified written request and  
22 respond accordingly. The language of the provision is broad and clear. To be  
23 a qualified written request, a written correspondence must reasonably identify  
24 the borrower and account and must "include a statement of the reasons for the  
25 belief of the borrower, *to the extent applicable*, that the account is in error or  
26 provides sufficient detail to the servicer regarding other information sought by  
the borrower." 12 U.S.C. § 2605(e)(1)(B) (emphasis added). Any reasonably  
stated written request for account information can be a qualified written  
request. To the extent that a borrower is able to provide reasons for a belief  
that the account is in error, the borrower should provide them, but any request  
for information made with sufficient detail is enough under RESPA to be a

1 qualified written request and thus to trigger the servicer's obligations to  
2 respond.

3       *Id.* at 686-87 (citations omitted). The court ruled that the borrowers' letters were, indeed,  
4 qualified written requests. *See also Garcia v. Wachovia Mortgage Corp.*, 676 F. Supp.2d  
5 895, 909 (C.D. Cal. 2009) (borrower's letter was a qualified written request even though it  
6 didn't contain a statement of reasons for borrower's belief of error; letter provided sufficient  
7 detail regarding "other information" sought); *Arriaga v. Wells Fargo Bank, N.A.*, 2011 WL  
8 4738522, at \*4 (N.D. Ill. 2011) (where borrowers' letters stated their names and account  
9 number and identified either a request for information or a dispute in the account, servicer's  
10 motion to dismiss borrower's RESPA claim for violations of 12 U.S.C. § 2605 was denied).

11       Under 12 U.S.C. § 2605(f)(1)(B), if a plaintiff establishes a pattern by the servicer of  
12 noncompliance with the requirements of Section 2605, the Court may award statutory  
13 damages of up to \$1,000, whether or not the plaintiff has suffered any actual damages.  
14 The trial court in *Serfass v. Cit Group/Consumer Fin., Inc.*, 2008 WL 4299356, \*5 (D.S.C.  
15 2008), held that a lender's failure to respond to five qualified written requests from a  
16 borrower constituted "a pattern or practice of noncompliance" with RESPA's response  
17 obligation. *See also Ploog v. Homeside Lending, Inc.*, 209 F.Supp.2d 863, 869 (N.D. Ill.  
18 2002) (borrower's allegation that lender had failed to respond to five qualified written  
19 requests stated a cognizable claim for relief under 12 U.S.C. § 2605 for statutory damages  
20 under section (f)(1)(B); *Amini v. Bank of America Corp.*, Order Granting in Part Defendants'  
21 Motion to Dismiss at 8 (concluding that lender's failure to respond to four qualified written  
22 requests under RESPA adequately alleged a claim for statutory damages under  
23 §2605(f)(1)(B)). In *Moon*, Judge Zilly relied on the servicer's failure to comply with the  
24  
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1 requests in three letters in denying the lender's motion for summary judgment that it had not  
2 engaged in a pattern of noncompliance. Here, the servicer ignored four letters. The Court  
3 should conclude, as a matter of law, that four separate refusals to one borrower to supply the  
4 requested information in response to a Qualified Written Request constitutes a "pattern or  
5 practice of noncompliance" with the requirements of RESPA, entitling Mr. Amini to an  
6 award of statutory damages of \$1,000. BOA, as Bank of America Home Loans Servicing,  
7 LP's successor by merger, is liable for these violations. *Payne v. Saberhagen Holdings, Inc.*,  
8 147 Wn. App. 17, 26,190 P.3d 102 (2008) (citations omitted) (surviving company after  
9 merger is responsible for merged company's liabilities). In addition, the Court should award  
10 Mr. Amini "the costs of the action," together with an award of reasonable attorney's fees. 12  
11 U.S.C. § 2605(f)(3).

13 **B. The Court should enter summary judgment in favor of Mr. Amini on his claim  
14 for violations of the Fair Debt Collections Practices Act.**

15 As discussed above, BAC Home Loans Servicing, LP was the servicer of the two  
16 notes prior to July 1, 2011. As its successor by merger, BOA is liable for BAC Home Loans  
17 Servicing, LP's FDCPA violations. *Payne*, 147 Wn. App. at 26. After July 1, 2011, BOA was  
18 the servicer of the two loans and is liable for its own violations of the FDCPA. The FDCPA  
19 is a strict liability statute and should be liberally construed in favor of the consumer. *Clark v.*  
20 *Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1175-76 (9th Cir. 2006).

21 Following the assignment of the loans in June 2011, BAC Home Loans Servicing, LP  
22 and BOA were "debt collectors" and violated the FDCPA.<sup>3</sup> 15 U.S.C. §1692a(6) provides:  
23

24  
25 \_\_\_\_\_  
26 <sup>3</sup> Mr. Amini is not abandoning his claim that communications to him by BAC Home Loans  
Servicing, LP prior to June 13, 2011 violated the FDCPA. However, because BOA has not turned  
over any documents related to the transfer or assignment of the loans or servicing rights other than the

1                         (6) The term "debt collector" means any person who uses any  
2 instrumentality of interstate commerce or the mails in any business the  
3 principal purpose of which is the collection of any debts, or who regularly  
4 collects or attempts to collect, directly or indirectly, debts owed or due or  
5 asserted to be owed or due another. Notwithstanding the exclusion provided  
6 by clause (F) of the last sentence of this paragraph, the term includes any  
7 creditor who, in the process of collecting his own debts, uses any name other  
8 than his own which would indicate that a third person is collecting or  
9 attempting to collect such debts. For the purpose of section 1692f(6) of this  
10 title, such term also includes any person who uses any instrumentality of  
11 interstate commerce or the mails in any business the principal purpose of  
12 which is the enforcement of security interests. The term does not include--

13                         (A) any officer or employee of a creditor while, in the name of the  
14 creditor, collecting debts for such creditor;

15                         (B) any person while acting as a debt collector for another person, both  
16 of whom are related by common ownership or affiliated by corporate control,  
17 if the person acting as a debt collector does so only for persons to whom it is  
18 so related or affiliated and if the principal business of such person is not the  
19 collection of debts;

20                         (C) any officer or employee of the United States or any State to the  
21 extent that collecting or attempting to collect any debt is in the performance of  
his official duties;

22                         (D) any person while serving or attempting to serve legal process on  
any other person in connection with the judicial enforcement of any debt;

23                         (E) any nonprofit organization which, at the request of consumers,  
24 performs bona fide consumer credit counseling and assists consumers in the  
liquidation of their debts by receiving payments from such consumers and  
distributing such amounts to creditors; and

25                         (F) any person collecting or attempting to collect any debt owed or due  
or asserted to be owed or due another to the extent such activity (i) is  
incidental to a bona fide fiduciary obligation or a bona fide escrow  
arrangement; (ii) concerns a debt which was originated by such person; (iii)  
concerns a debt which was not in default at the time it was obtained by such  
person; or (iv) concerns a debt obtained by such person as a secured party in a  
commercial credit transaction involving the creditor.

26                         Although couched in the negative, the statute makes it clear that a "debt collector" includes a  
27 person collecting or attempting to collect a debt owed to another if the creditor received the  
28 debt through assignment and the debt was in default at the time it was assigned. 15 U.S.C.  
29

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30                         Assignment of Deed of Trust (Beckett Decl., Ex. J), Mr. Amini is not able to move for summary  
31 judgment with respect to those communications.

1 §1692a(6)(F). Thus, if a plaintiff can show that a mortgage loan servicer serviced the loan  
2 after the holder of the mortgage loan obtained the note by assignment when it was in default,  
3 the loan servicer is a “debt collector” under the FDCPA. *Frison v. Accredited Home Lenders,*  
4 *Inc.*, 2011 WL 1103468, \*5-6 (S.D. Cal. 2011).

5 Here, the original creditor of the two loans at issue was Countrywide. The debts were  
6 incurred on August 9, 2006. *Id.* The \$504,000 note has been in default since October, 2008,  
7 and the \$30,000 loan has been in default since December, 2008. The debts were assigned to  
8 BOA on about April 27, 2009, as a result of the merger between Countrywide and BOA.  
9 They were then assigned to other creditors in June 2011, but BAC Home Loans Servicing,  
10 LP continued to service them until July 1, 2011, when servicing changed to BOA. Because  
11 the loans were in default in June 2011 when they were assigned to third parties, both BAC  
12 Home Loans Servicing, LP and BOA were “debt collectors” under the FDCPA when they  
13 serviced the loans after those assignments.  
14

15 U.S.C. § 1692c(a) provides, in pertinent part:

17 Without the prior consent of the consumer given directly to the debt collector  
18 or the express permission of a court of competent jurisdiction, a debt collector  
19 may not communicate with a consumer in connection with the collection of  
any debt:  
20

21       ...

22           (2) if the debt collector knows the consumer is represented by an  
23 attorney with respect to such debt and has knowledge of, or can readily  
ascertain, such attorney’s name and address, unless the attorney fails to  
respond within a reasonable period of time to a communication with the  
consumer[.]  
24

25 Both BAC Home Loans Servicing, LP and BOA knew that Mr. Amini was  
represented by legal counsel with respect to the two notes after June 13, 2011. Nevertheless,  
26 they repeatedly communicated directly with Mr. Amini about the debts after that date, thus

1 repeatedly violating 15 U.S.C. § 1692c(a)(2). Amini Decl., Ex.’s C, D; Beckett Decl., Ex.’s  
2 L and M.<sup>4</sup>

3 15 U.S.C. § 1692k(a)(2) authorizes the Court to award up to \$1,000 statutory  
4 damages in a proceeding for a defendant’s violation of the FDCPA. A successful FDCPA  
5 plaintiff is entitled to statutory damages even if the Plaintiff has not suffered any actual  
6 damage. *Baker v. GC Services Corp.*, 677 F.2d 775, 780 (9th Cir. 1982). In setting the  
7 amount of statutory damages, the Court considers “the frequency and persistence of the  
8 noncompliance by the debt collector, the nature of such noncompliance, and the extent to  
9 which noncompliance was intentional.” 15 U.S.C. § 1692k(b)(1). In view of the number of  
10 direct communications by BAC Home Loans Servicing, LP and BOA with full knowledge of  
11 Mr. Beckett’s representation of Mr. Amini, the Court should award Mr. Amini the maximum  
12 statutory damages of \$1,000. In addition, the Court should award Mr. Amini “the costs of the  
13 action, together with a reasonable attorney’s fee.” 15 U.S.C. § 1692k(a)(3).

16 **IV. CONCLUSION**

17 The Court should grant summary judgment on Mr. Amini’s RESPA and FDCPA  
18 claims, award him statutory damages of \$1,000 for each claim, and further award him his  
19 reasonable attorney’s fees on each claim. A proposed order is submitted with this motion.

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21 <sup>4</sup> There were numerous personal telephone contacts between BAC Home Loans Servicing, LP  
22 or BOA after June 13, 2011, in addition to numerous mailed direct communications. *See* Amini Decl.,  
23 Ex. C, D; Beckett Decl., Ex.’s L and M. There were also numerous telephone contacts attempted that  
24 resulted in connection to Mr. Amini’s voice mail system or answering machine, which contacts were  
25 also prohibited by 15 U.S.C. § 1692c(a). *See Lensch v. Armada Corp.*, 795 F. Supp.2d 1180, 1189  
26 (W.D. Wash. 2011) (voice mail messages are subject to the FDCPA); *Leahy v. Niagara Credit  
Solutions, Inc.*, 756 F. Supp.2d 1322, 1327 (N.D. Ala. 2010) (claim that creditor left message on  
consumer’s answering machine without disclosures required by FDCPA stated a claim for violating  
FDCPA). In view of the numerous completed calls and the collection notices that BOA sent directly  
to Mr. Amini, however, the Court need not consider the voice mail and answering machine messages  
to grant Mr. Amini’s motion for partial summary judgment on the FDCPA claim.

1

DATED THIS 5 day of December, 2012.

2

BERRY & BECKETT, PLLP

3

/s/ Guy Beckett

4

Guy W. Beckett, WSBA #14939  
Attorneys for Plaintiff

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Berry & Beckett  
PLLP  
1708 Bellevue Avenue  
Seattle, WA 98122  
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